

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

RICHARD BORTHWICK,	:	APPEAL NO. C-090789
		TRIAL NO. A-0901106
Plaintiff-Appellant,	:	
		<i>JUDGMENT ENTRY.</i>
vs.	:	
CITY OF CINCINNATI,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

On January 5, 2009, defendant-appellee city of Cincinnati issued an order declaring the property of plaintiff-appellee Richard Borthwick to be a public nuisance and ordering its demolition. On February 3, 2009, Borthwick appealed to the trial court. The trial court referred the case to a magistrate who scheduled a case-management conference. Borthwick failed to appear for this conference, and the magistrate rescheduled it, warning that the failure to appear would result in the dismissal of the case.

Borthwick appeared at the rescheduled conference, and the magistrate issued a scheduling order, signed by both parties, on May 5, 2009. The scheduling order indicated that Borthwick was to submit his brief by June 2, 2009. The order indicated that a failure to comply with the order could “result in the imposition of sanctions by the court.” Borthwick failed to file his brief on time. Without seeking leave of court, he filed a document titled “Concerning the historic German Presbyterian Church at 1625 and 1627 Baltimore Ave.” on June 15. The filing did not

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

indicate that it had been served on the city. The city filed a motion to dismiss for failure to prosecute on July 1. Borthwick filed a motion requesting leave to file his brief out of time, but the magistrate issued a decision recommending dismissal of the case for failure to prosecute. Borthwick filed a timely objection to the decision, but the trial court overruled the objection and dismissed the case.

While Borthwick asserts a number of assignments of error in this appeal, they are inartfully crafted and several are nonsensical. In essence, Borthwick claims that the trial court improperly dismissed his case for failure to prosecute. We disagree.

Civ.R. 41(B)(1), which governs involuntary dismissals for failure to prosecute, requires that the court give notice of its intention to dismiss the case.² The filing of a motion to dismiss for failure to prosecute can act as implied notice under Civ.R. 41(B)(1).³ The decision to dismiss a case for failure to prosecute is left to the sound discretion of the trial court and will not be reversed absent an abuse of discretion.⁴

In this case, we find no abuse of discretion. The trial court was free to reject Borthwick's explanation for his failure to file a timely brief—that he had been unable to reach the assistant city solicitor with whom he had been working.

As the city tries to find solutions for the blighted properties that exist throughout Cincinnati, any impediments or delays affect not only the parties involved, but the neighborhoods that are forced to live with these properties. Not only do they create an immediate public safety hazard, but they also foster an atmosphere conducive to various forms of criminal behavior. One single blighted property, left unabated for too long, can decimate an entire community.

² *Penaranda v. DNJ Holdings*, 1st Dist. No. C-090739, 2010-Ohio-5848, at ¶18, citing *Perotti v. Ferguson* (1983), 7 Ohio St.3d 1, 2-3, 454 N.E.2d 951.

³ See *Genesis Outdoor Advertising, Inc. v. Troy Twp. Bd. of Zoning Appeals*, 11th Dist. No. 2001-G-2399, 2003-Ohio-3692, at ¶20, citing *Svoboda v. Brunswick* (1983), 6 Ohio St.3d 348, 350, 453 N.E.2d 648; *Cook v. Transamerica Ins. Servs.* (1990), 70 Ohio App.3d 327, 331, 590 N.E.2d 1382.

⁴ *Jones v. Hartranft*, 78 Ohio St.3d 368, 372, 1997-Ohio-203, 678 N.E.2d 530.

These types of cases, therefore, are unlike other civil actions where delays affect only the parties involved. Public policy dictates that they be addressed as quickly as possible. In this case, Borthwick's failures to timely participate in the proceedings, along with his failure to serve documents on the city and his less-than-compelling explanation for the delays, needlessly prolonged the litigation, with the result being that a community was left to suffer. On this record, the trial court did not abuse its discretion when it dismissed Borthwick's case.

For these reasons, Borthwick's assignments of error are overruled, and the judgment of the trial court is affirmed.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

DINKELACKER, P.J., HENDON and FISCHER, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 23, 2011

per order of the Court _____.
Presiding Judge